

Pay Discrimination

Equal Pay Act

50th Anniversary

June 10, 1963 - June 10, 2013





President John F.
Kennedy signed
the Equal Pay
Act on
June 10, 1963

The Equal Pay Act of 1963

S. 1409

[PUBLIC LAW 88-88]

Eighty-eighth Congress of the United States of America

AT THE FIRST SESSION

Began and held at the City of Washington, on Wednesday, the ninth day of January, one thousand nine hundred and sixty-three

An Act

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963."

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

- (1) depresses wages and living standards for employees necessary for their health and efficiency;
- (2) prevents the maximum utilization of the available labor resources;
- (3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
- (4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

Sec. 3. Section 6 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.), is amended by adding thereto a new subsection (d) as follows:

"(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex; *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

"(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

"(3) For purposes of administration and enforcement, any amount owing to any employee which has been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

"(4) As used in this subsection, the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

S. 1409—2

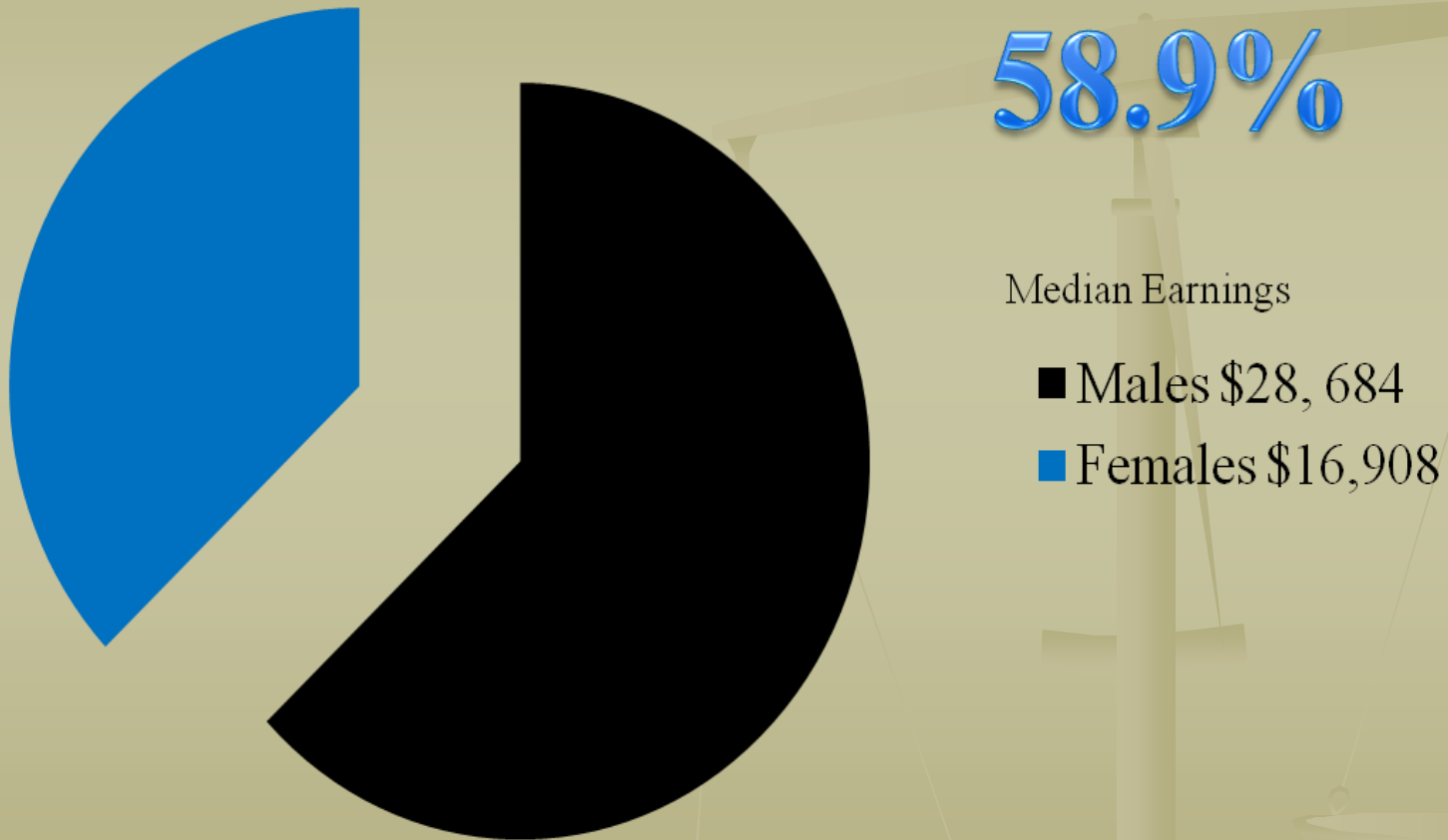
Sec. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: *Provided*, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d) (4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Approved
June 10th 1963
The White House
Working on District of Columbia
United States of America
John Edgar Hoover
12:00 P.M.
W.A. Rorer
J.F.R. Rorer

Wage Gap – 1963

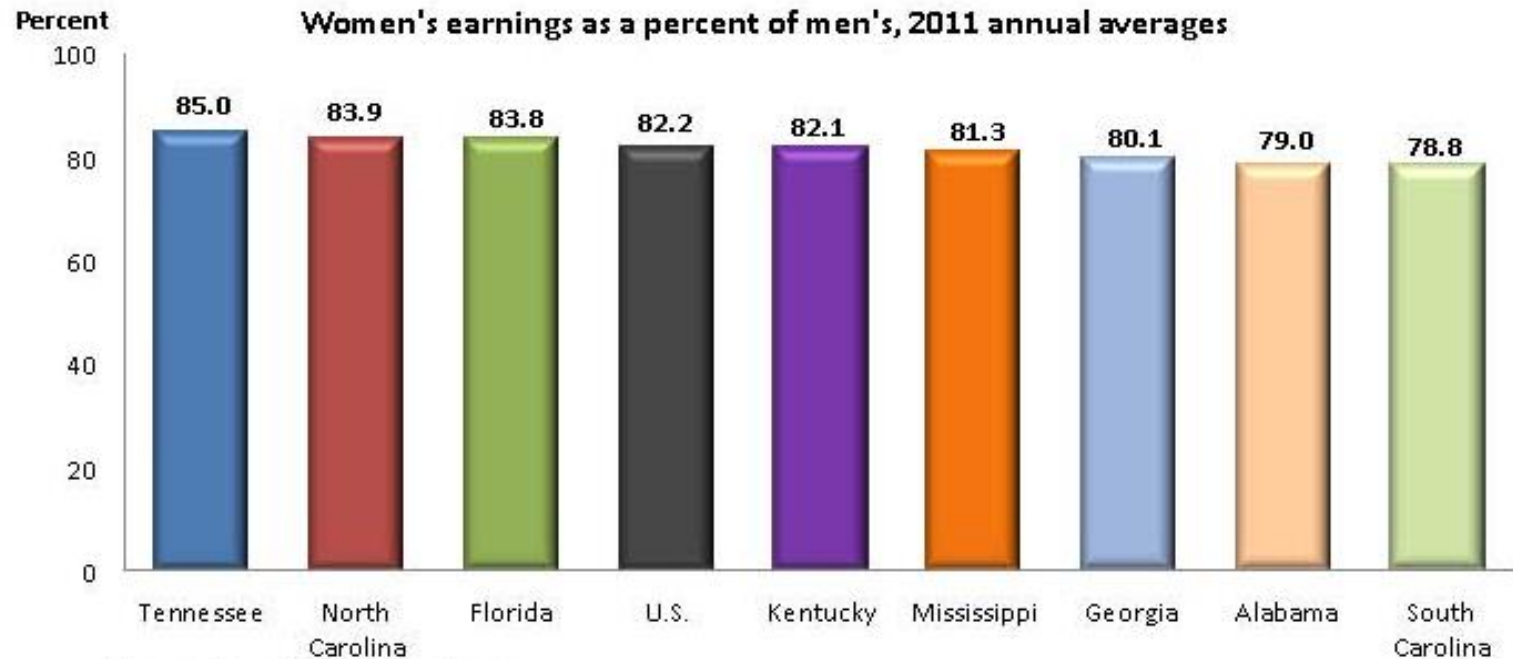


EEOC ENFORCEMENT



**1979 – President
Jimmy Carter
Transferred
Enforcement of
Equal Pay Act to
EEOC**

Regional Data



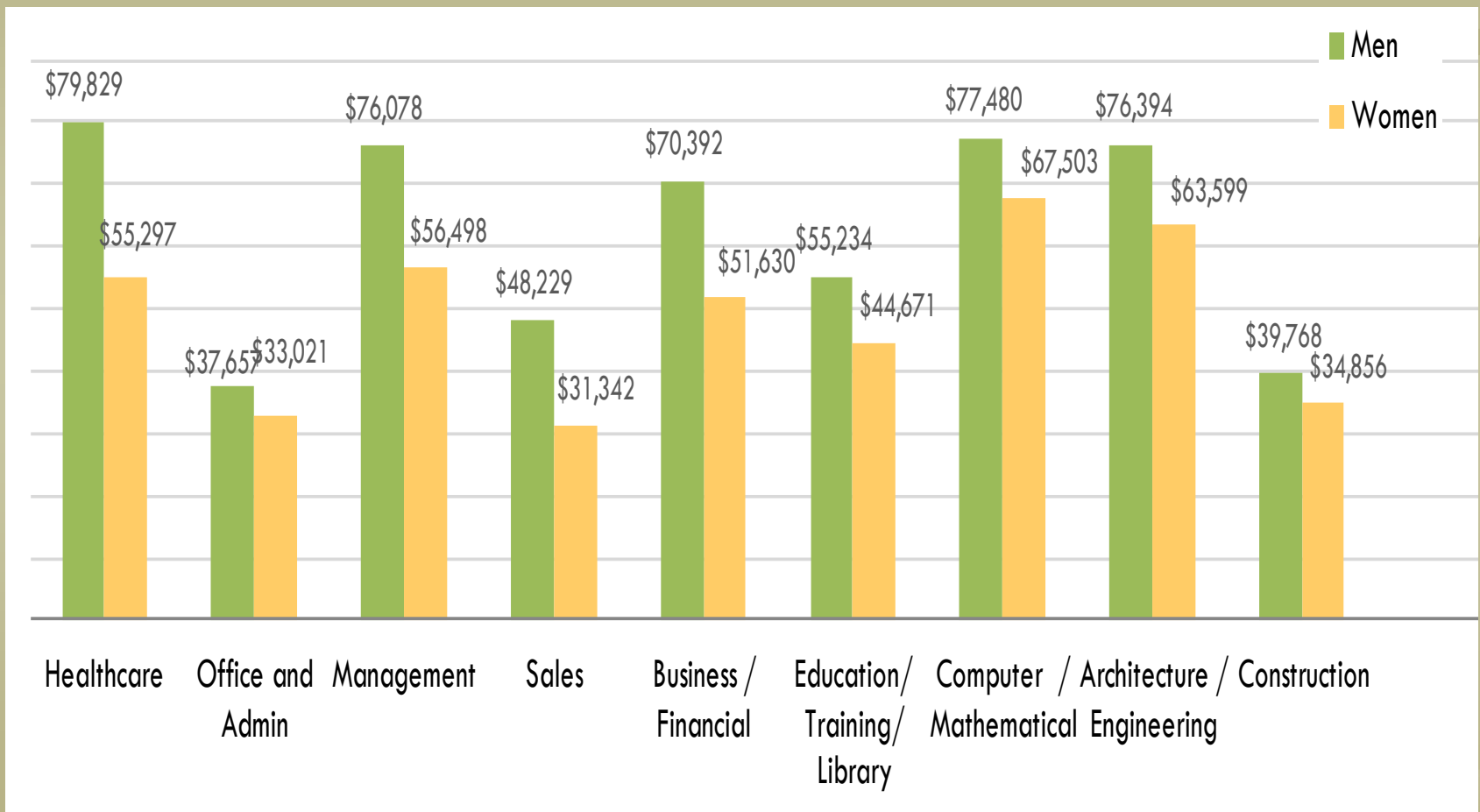
Source: Current Population Survey

March 2013

www.bls.gov

National Median Wages by Occupation and Gender, 2011

Source: U.S. Census Bureau, American Community Survey, 2011



Timeliness of Pay Discrimination Claims



- Bazemore and Ledbetter decisions
- Lilly Ledbetter Fair Pay Act
 - “Paycheck accrual” rule
 - Restores EEOC position
- Equal Pay Act



Scope of Ledbetter Act



- **Applies to all EEO statutes**
- **Applies to all forms of compensation**
 - Wages, bonuses, health insurance, pension benefits, etc.
- **Applies to discriminatory compensation decision or other practice affecting compensation**
 - Performance appraisal, job classification, etc.
- **Retroactive**

The Equal Pay Act (EPA)

- Prohibits wage discrimination based on gender
- Employers may not pay unequal wages to men and women performing substantially equal work in the same establishment



EPA General Provisions

No unequal wages for men and women who perform jobs that:

- Share “common core” of tasks
- Require substantially equal skill, effort, and responsibility and are performed under similar working conditions
- Are in the same establishment

“Common Core” of Tasks

Do the jobs share the same “common core” of tasks?

- **Is a significant proportion of the tasks the same?**
- **Does the comparator’s job involve extra duties?**
 - **If so, are they substantial?**
 - **Extra duties that are insignificant will not render the jobs unequal.**

What is Skill?

- Experience,
- Ability,
- Education, and
- Training required to perform the job



What is Effort?

Effort is measured by the amount of physical or mental exertion needed to perform a job.



What is Responsibility?

- **Work done without supervision**
- **Supervisory functions**
- **Impact of functions on the business (usually financial accountability)**



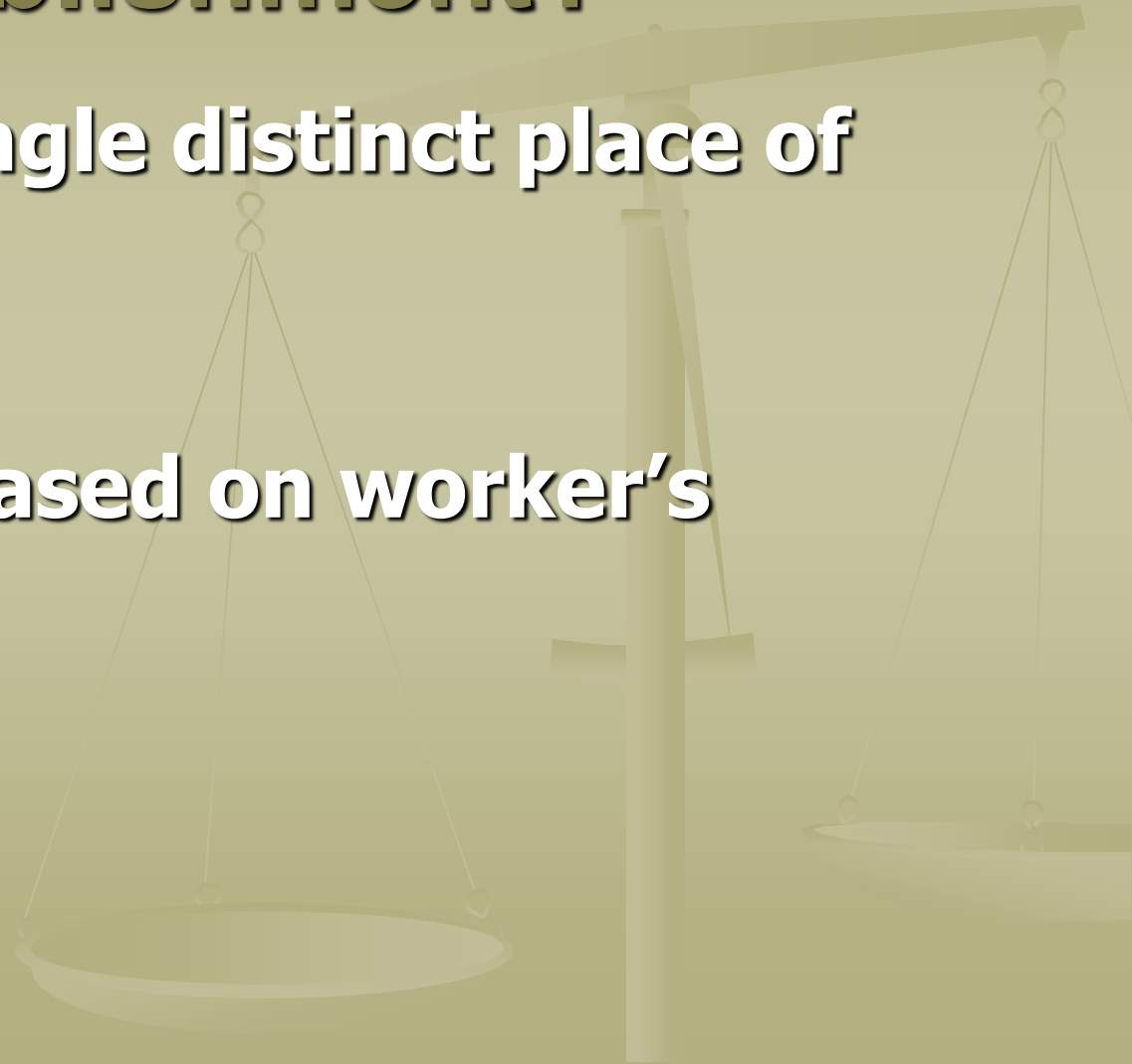
Working Conditions

- Physical surroundings and hazards
- Intensity of environmental elements
- Number and frequency of physical hazards and severity of potential injury



What is the same establishment?

- Typically, a single distinct place of business
- May expand based on worker's practices



Employer Defenses for Differences in Wages

- **Seniority system**
- **Merit system**
- **Incentive system**
- **Any other factor other than sex/gender**



Seniority System

- Length of employment
- A difference in pay based on a seniority system is permitted as long as it is -
 - based on predetermined criteria,
 - has been communicated to employees, and
 - is applied consistently and even-handedly.

Merit System



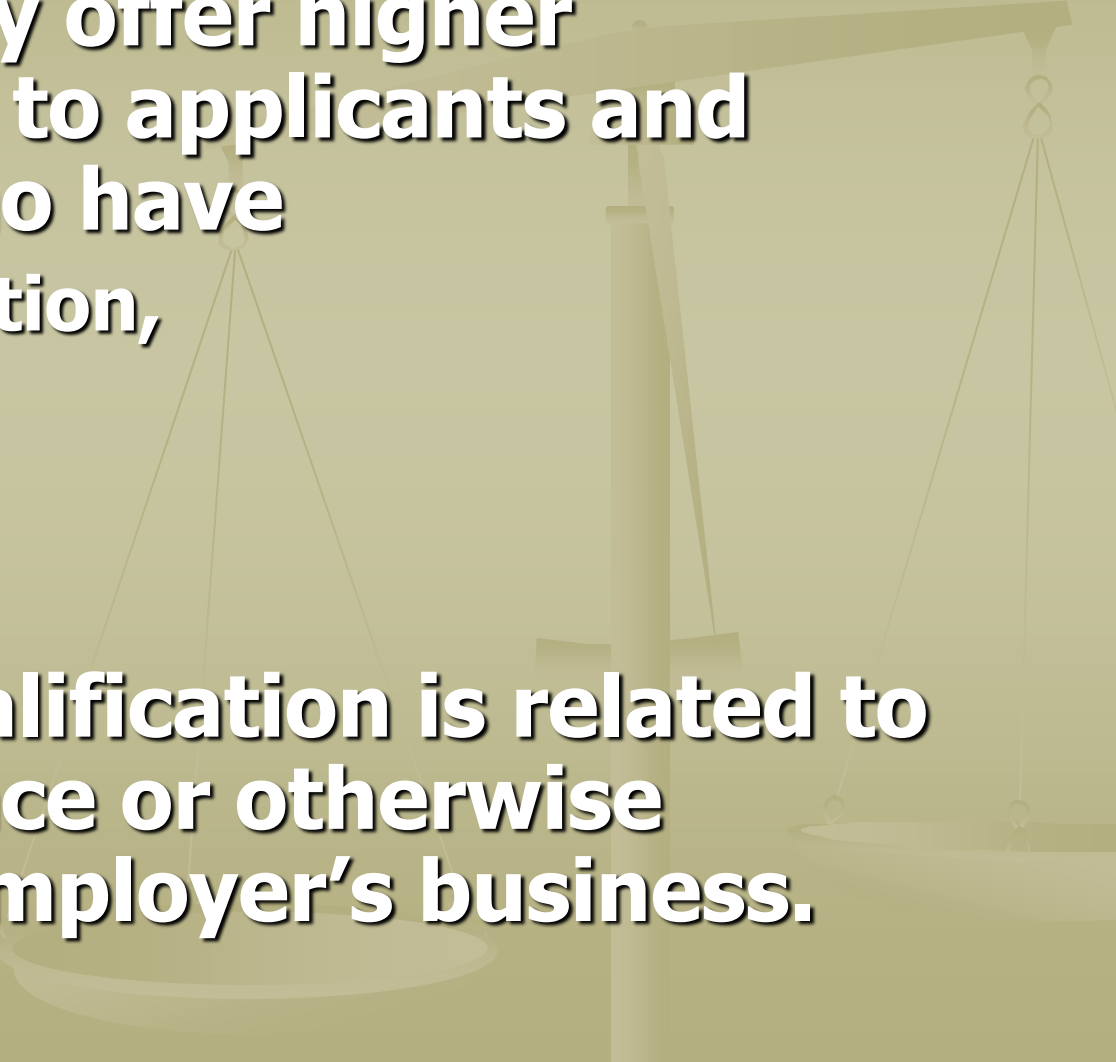
- **Job performance**
- **A difference in pay based on a merit system is permitted as long as it is -**
 - **based on predetermined criteria,**
 - **has been communicated to employees, and**
 - **is applied consistently and even-handedly.**

Incentive System

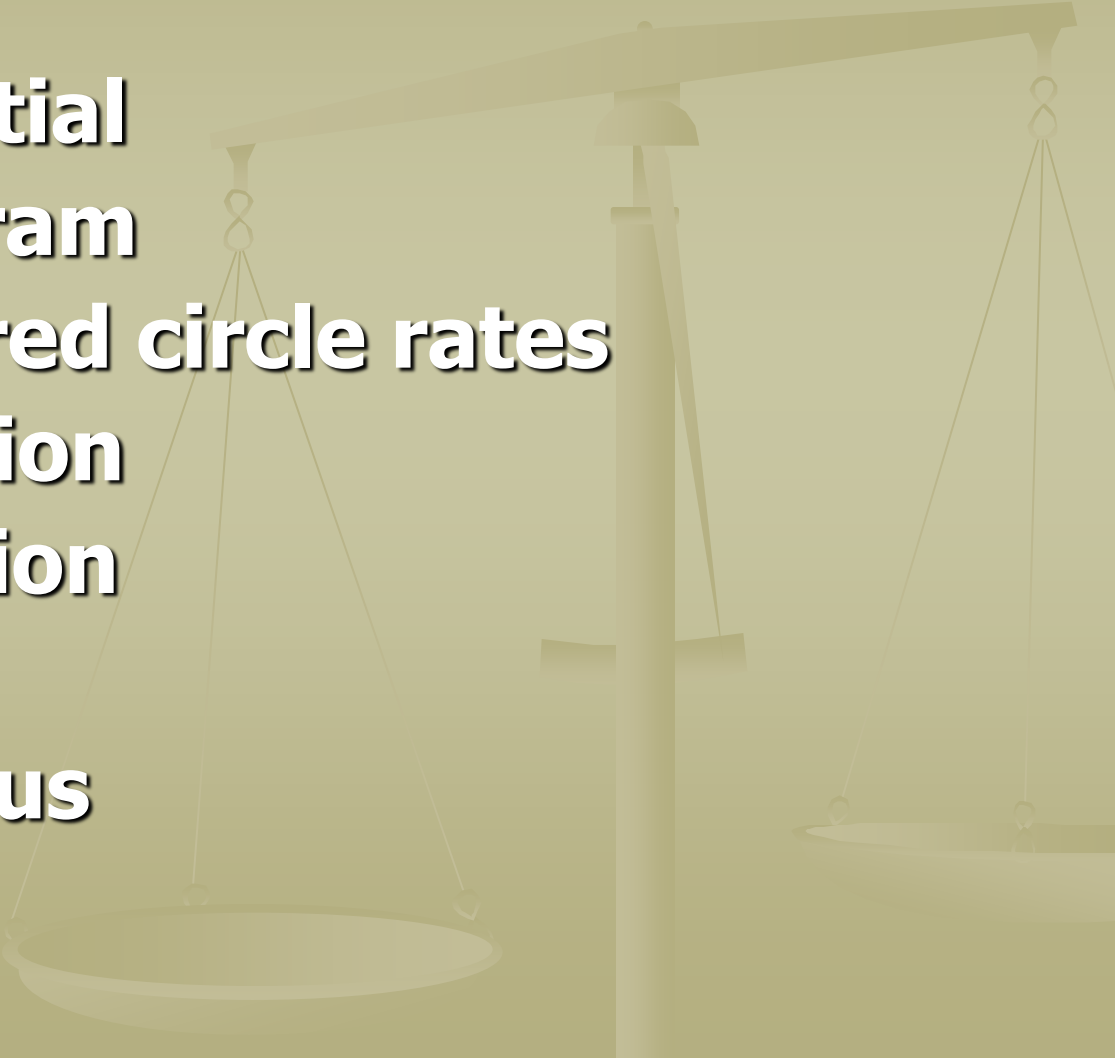
Quality or Quantity of Production

- **Quality or quantity of production**
- **A difference in pay based on an incentive system is permitted if it is -**
 - **based on predetermined criteria,**
 - **has been communicated to employees, and**
 - **is applied consistently and even-handedly.**

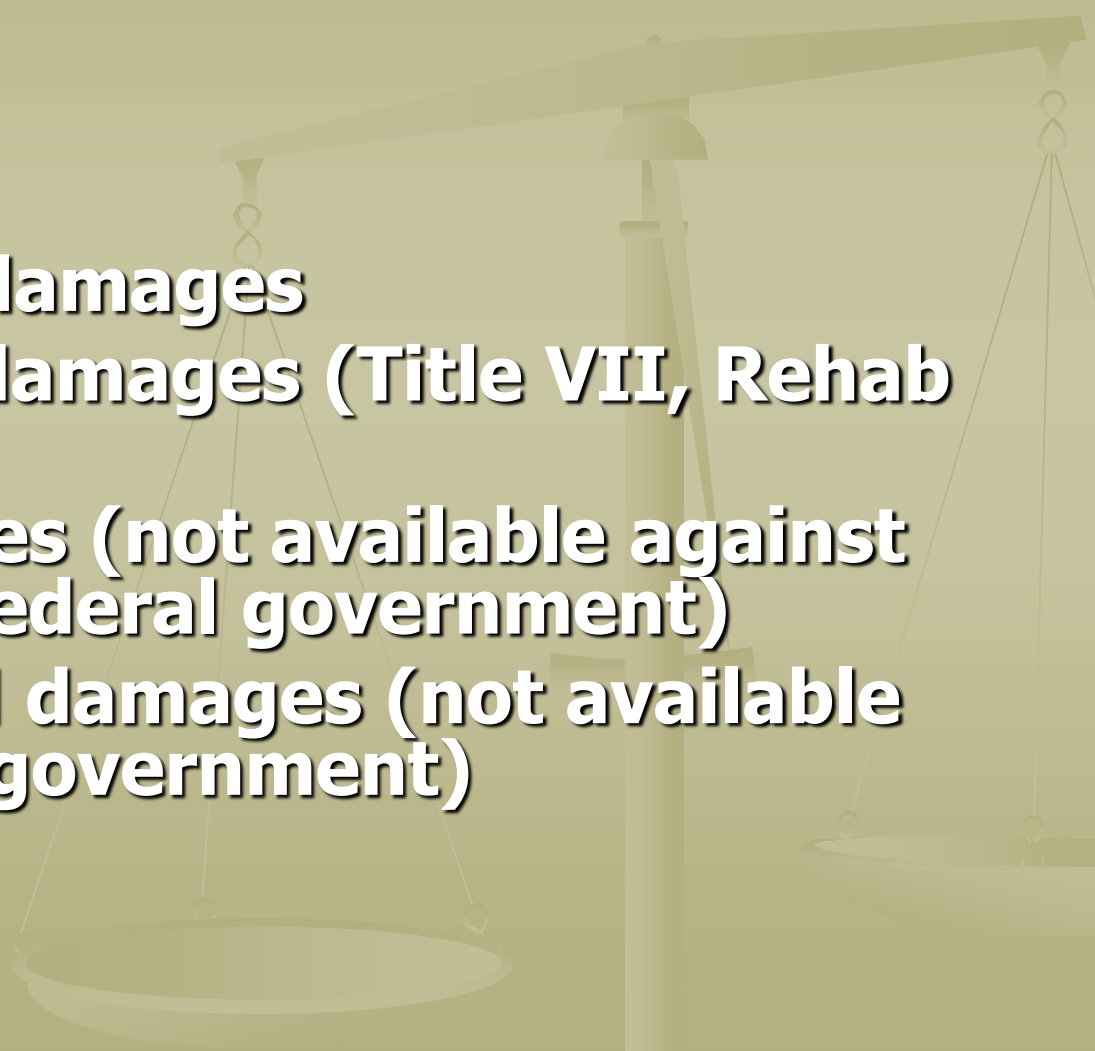
Factors Other Than Sex/Gender

- Employers may offer higher compensation to applicants and employees who have
 - greater education,
 - experience,
 - training, or
 - ability
 - Where the qualification is related to job performance or otherwise benefits the employer's business.
- 

Factors Other Than Sex/Gender

- Night differential
 - Training program
 - Saved grade/red circle rates
 - Job classification
 - Market valuation
 - Prior salary
 - Part-time status
- 

Remedies

- **Back pay**
 - **Raise**
 - **Attorney's fees**
 - **EPA liquidated damages**
 - **Compensatory damages (Title VII, Rehab Act)**
 - **Punitive damages (not available against state, local, or federal government)**
 - **ADEA liquidated damages (not available against federal government)**
- 

Best Pay Practices

Consistency In Establishing Starting Salaries



Best Pay Practices

- Have a written policy for promotional pay increases
- Communicate your policy and promote transparency
- Limit managerial discretion in setting pay
- Train key decision makers
- Implement checks and balances to prevent discrimination and avoid liability

**For additional information or to
contact EEOC**

www.eeoc.gov

Memphis District Office:

(901) 544-0119

1-800-669-4000

1-800-669-6820 (TTY)